

**FIRST ENGROSSMENT
with Conference Committee Amendments
ENGROSSED HOUSE BILL NO. 1024**

Introduced by

Appropriations Committee

1 A BILL for an Act to provide an appropriation for defraying the expenses of the department of
2 environmental quality; to create and enact a new section to chapter 23.1-12 and chapter
3 23.1-16 of the North Dakota Century Code, relating to boiler inspections and the petroleum tank
4 release compensation fund; to amend and reenact sections 23.1-12-02, 23.1-12-04, 23.1-12-05,
5 23.1-12-06, 23.1-12-10, 23.1-12-11, 23.1-12-14, 23.1-12-15, 23.1-12-17, 23.1-12-18,
6 23.1-12-19, 23.1-12-20, 23.1-12-23, 23.1-12-24, 23.1-12-25, 23.1-12-26, 23.1-12-27,
7 23.1-12-28, 23.1-12-29, 23.1-12-30, and 23.1-16-13 of the North Dakota Century Code, relating
8 to the duties of the department of environmental quality; to repeal chapter 26.1-22.1 of the
9 North Dakota Century Code, relating to boiler inspections; to provide for a report; to provide an
10 effective date; and to provide a contingent expiration date.

11 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

12 **SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds
13 as may be necessary, are appropriated out of any moneys in the general fund in the state
14 treasury, not otherwise appropriated, and from special funds derived from federal funds and
15 other income, to the department of environmental quality for the purpose of defraying the
16 expenses of the department of environmental quality, for the biennium beginning July 1, 2019,
17 and ending June 30, 2021, as follows:

		Adjustments or		
	<u>Base Level</u>	<u>Enhancements</u>	<u>Appropriation</u>	
18				
19				
20	Salaries and wages	\$27,040,544	\$3,546,814	\$30,587,358
21	Operating expenses	8,005,878	1,996,302	10,002,180
22	Capital assets	1,258,249	1,005,180	2,263,429
23	Grants	<u>13,407,000</u>	<u>2,454,529</u>	<u>15,861,529</u>
24	Total all funds	\$49,711,671	\$9,002,825	\$58,714,496

1	Less estimated income	<u>38,987,520</u>	<u>7,246,054</u>	<u>46,233,574</u>
2	Total general fund	\$10,724,151	\$1,756,771	\$12,480,922
3	Full-time equivalent positions	152.50	13.00	165.50

4 **SECTION 2. ONE-TIME FUNDING - EFFECT ON BASE BUDGET - REPORT TO**

5 **SIXTY-SEVENTH LEGISLATIVE ASSEMBLY.** The following amounts reflect the one-time
6 funding items approved by the sixty-fifth legislative assembly for the 2017-19 biennium and the
7 2019-21 biennium one-time funding items included in the appropriation in section 1 of this Act:

8	<u>One-Time Funding Description</u>	<u>2017-19</u>	<u>2019-21</u>
9	Environmental protection agency lawsuit	\$500,000	\$0
10	Air pollution program equipment	<u>0</u>	<u>1,040,000</u>
11	Total estimated income	\$500,000	\$1,040,000

12 The 2019-21 biennium one-time funding amounts are not a part of the entity's base budget
13 for the 2021-23 biennium. The department of environmental quality shall report to the
14 appropriations committees of the sixty-seventh legislative assembly on the use of this one-time
15 funding for the biennium beginning July 1, 2019, and ending June 30, 2021.

16 **SECTION 3. ENVIRONMENT AND RANGELAND PROTECTION FUND.** The estimated
17 income line item included in section 1 of this Act includes \$250,000, or so much of the sum as
18 may be necessary, to be made available to the department of environmental quality from the
19 environment and rangeland protection fund, for the biennium beginning July 1, 2019, and
20 ending June 30, 2021. This amount includes \$50,000 for a grant to the North Dakota
21 stockmen's association environmental services program.

22 **SECTION 4. STATE FIRE AND TORNADO FUND.** The estimated income line item
23 included in section 1 of this Act includes \$882,249, or so much of the sum as may be necessary,
24 to be made available to the department of environmental quality from the state fire and tornado
25 fund for the boiler inspection program, for the biennium beginning July 1, 2019, and ending
26 June 30, 2021.

27 **SECTION 5. ESTIMATED INCOME - PETROLEUM RELEASE COMPENSATION FUND.**
28 The estimated income line item included in section 1 of this Act includes \$297,217, or so much
29 of the sum as may be necessary, to be made available to the department of environmental
30 quality from the petroleum release compensation fund for expenses related to the petroleum
31 tank release program, for the biennium beginning July 1, 2019, and ending June 30, 2021.

1 **SECTION 6. STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - ONE-TIME**

2 **FUNDING - FEDERAL PROGRAM SUPREMACY.** The estimated income line item included in
3 section 1 of this Act includes \$1,040,000, or so much of the sum as may be necessary, to be
4 made available to the department of environmental quality from the strategic investment and
5 improvements fund for one-time funding of air pollution program equipment related to the
6 establishment of federal program supremacy, for the biennium beginning July 1, 2019, and
7 ending June 30, 2021.

8 **SECTION 7. FUNDING - FEDERAL PROGRAM SUPREMACY.** The amount of \$1,056,767
9 from the general fund and eight full-time equivalent positions, related to the state assuming
10 primacy over the quad O and quad Oa federal air pollution programs, included in section 1 of
11 this Act are effective July 1, 2020.

12 **SECTION 8. AMENDMENT.** Section 23.1-12-02 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **23.1-12-02. Definitions. (Contingent effective date - [See note](#))**

15 As used in this chapter, unless the context otherwise requires:

- 16 1. "Actually incurred" means, in the case of corrective action expenditures, the owner,
17 operator, landowner, an insurer, or a contractor hired by the owner, operator, or the
18 landlord has expended time and materials, and only that person is receiving
19 reimbursement from the fund.
- 20 2. ~~"Administrator" means the manager of the state fire and tornado fund.~~
- 21 3. "Board" means the petroleum release compensation board.
- 22 4. ~~"Commissioner" means the insurance commissioner.~~
- 23 5.3. "Corrective action" means an action required by the department to minimize, contain,
24 eliminate, remediate, mitigate, or clean up a release, including any remedial
25 emergency measures. The term does not include the repair or replacement of
26 equipment or preconstructed property.
- 27 6.4. "Dealer" means a person licensed by the tax commissioner to sell motor vehicle fuel or
28 special fuels within the state.
- 29 7.5. "Department" means the department of environmental quality.
- 30 8.6. "Fund" means the petroleum release compensation fund.

- 1 ~~9.7.~~ "Location" means a physical address or site that has contiguous properties.
2 Noncontiguous properties within a municipality or other governmental jurisdiction are
3 considered separate locations.
- 4 ~~10.8.~~ "Operator" means a person in control of, or having responsibility for, the daily
5 operation of a tank under this chapter.
- 6 ~~11.9.~~ "Owner" means a person who holds title to, controls, or possesses an interest in the
7 tank before the discontinuation of its use.
- 8 ~~12.10.~~ "Petroleum" means any of the following:
9 a. Gasoline and petroleum products as defined in chapter 23.1-13.
10 b. Constituents of gasoline and fuel oil under subdivision a.
11 c. Oil sludge and oil refuse.
- 12 ~~13.11.~~ "Portable tank" means a storage tank along with its piping and wiring that is not
13 stationary or affixed, including a tank that is on skids.
- 14 ~~14.12.~~ "Release" means any unintentional spilling, leaking, emitting, discharging, escaping,
15 leaching, or disposing of petroleum from a tank into the environment whether
16 occurring before or after the effective date of this chapter, but does not include
17 discharges or designed venting allowed under federal or state law or under adopted
18 rules.
- 19 ~~15.13.~~ "Tank" means any one or a combination of containers, vessels, and enclosures,
20 whether aboveground or underground, including associated piping or appurtenances
21 used to contain an accumulation of petroleum. The term does not include:
22 a. Tanks owned by the federal government.
23 b. Tanks used for the transportation of petroleum.
24 c. A pipeline facility, including gathering lines:
25 (1) Regulated under the Natural Gas Pipeline Safety Act of 1968.
26 (2) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979.
27 (3) Regulated under state laws comparable to the provisions of law in
28 paragraph 1 or 2, if the facility is an interstate pipeline facility.
29 d. An underground farm or residential tank with a capacity of one thousand one
30 hundred gallons [4163.94 liters] or less or an aboveground farm or residential
31 tank of any capacity used for storing motor fuel for noncommercial purposes.

1 However, the owner of an aboveground farm or residential tank may, upon
2 application, register the tank and be eligible for reimbursement under this
3 chapter.

4 e. A tank used for storing heating oil for consumptive use on the premises where
5 stored.

6 f. A surface impoundment, pit, pond, or lagoon.

7 g. A flowthrough process tank.

8 h. A liquid trap or associated gathering lines directly related to oil or gas production
9 or gathering operations.

10 i. A storage tank situated in an underground area such as a basement, cellar, mine
11 working, drift, shaft, or tunnel, if the storage tank is situated upon or above the
12 surface of the floor.

13 j. A tank used for the storage of propane.

14 k. A tank used to fuel rail locomotives or surface coal mining equipment.

15 l. An aboveground tank used to feed diesel fuel generators. Upon application, the
16 owner or operator of an aboveground tank used to feed diesel fuel generators
17 may register the tank and is eligible for reimbursement under this chapter.

18 m. A portable tank.

19 n. A tank with a capacity under one thousand three hundred twenty gallons
20 [4996.728 liters] used to store lubricating oil.

21 ~~16-14.~~ "Tank integrity test" means a test to determine that a tank is sound and not leaking.
22 For an underground tank, the term means a certified third-party test that meets
23 environmental protection agency leak detection requirements. For an aboveground
24 tank, the term means a test conducted according to steel tank institute SP 001 or
25 American petroleum institute 653.

26 ~~17-15.~~ "Third party" means a person who is damaged by the act of a registered owner,
27 operator, or dealer requiring corrective action, or a person who suffers bodily injury or
28 property damage caused by a petroleum release.

29 **SECTION 9. AMENDMENT.** Section 23.1-12-04 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **23.1-12-04. Administration of fund - Staff. (Contingent effective date - [See note](#))**

2 The ~~administrator~~department shall administer the fund according to this chapter. The
3 ~~administrator~~department shall convene the board as may be necessary to keep the board
4 apprised of the fund's general operations. However, the board shall meet at least once each half
5 of each calendar year to review and to advise the ~~administrator~~department regarding the
6 administration of the fund, the fund's general operations, and to hear and decide denials of
7 claims by the ~~administrator~~department which may be appealed to the board, and to discuss all
8 claims against the fund. The ~~administrator~~department may employ any assistance and staff
9 necessary to administer the fund within the limits of legislative appropriation. A claimant
10 aggrieved by a decision of the ~~administrator~~department regarding a claim upon the fund may
11 appeal the decision to the board. The board may sustain, modify, or reverse the decision of the
12 ~~administrator~~department. The claimant or the ~~administrator~~department may appeal the board's
13 decision ~~to the commissioner. The decision of the commissioner may be appealed under~~
14 chapter 28-32.

15 **SECTION 10. AMENDMENT.** Section 23.1-12-05 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **23.1-12-05. Adoption of rules. (Contingent effective date - [See note](#))**

18 The ~~administrator~~department shall adopt rules regarding the practices and procedures of
19 the fund, the form and procedure for applications for compensation from the fund, procedures
20 for investigation of claims, procedures for determining the amount and type of costs that are
21 eligible for reimbursement from the fund, procedures for persons to perform services for the
22 fund, procedures for appeals to the board by claimants aggrieved by an adverse decision of the
23 ~~administrator~~department, and any other rules as may be appropriate to administer this chapter.

24 **SECTION 11. AMENDMENT.** Section 23.1-12-06 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **23.1-12-06. Release discovery. (Contingent effective date - [See note](#))**

27 If the department has reason to believe a release has occurred, it ~~shall notify the~~
28 ~~administrator.~~ The department shall direct the owner or operator to take reasonable and
29 necessary corrective actions as provided under federal or state law or under adopted rules.

30 **SECTION 12. AMENDMENT.** Section 23.1-12-10 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **23.1-12-10. Providing of information. (Contingent effective date - [See note](#))**

2 A person ~~the administrator or~~ the department has reason to believe is an owner or operator,
3 the owner of real property where corrective action is ordered to be taken, or a person that may
4 have information concerning a release shall, if requested by ~~the administrator or the~~
5 department, or any member, employee, or agent of ~~the administrator or~~ the department, furnish
6 to the ~~administrator or~~ the department any information that person has or may reasonably
7 obtain which is relevant to the release.

8 **SECTION 13. AMENDMENT.** Section 23.1-12-11 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **23.1-12-11. Examination of records. (Contingent effective date - [See note](#))**

11 Any employee of the ~~administrator or~~ the department may, upon presentation of official
12 credentials:

- 13 1. Examine and copy books, papers, records, memoranda, or data of any person that
14 has a duty to provide information to the ~~administrator or~~ the department under section
15 23.1-12-10; and
- 16 2. Enter upon public or private property to take action authorized by this section,
17 including obtaining information from a person that has a duty to provide the
18 information under section 23.1-12-10, conducting surveys and investigations, and
19 taking corrective action.

20 **SECTION 14. AMENDMENT.** Section 23.1-12-14 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **23.1-12-14. Other remedies. (Contingent effective date - [See note](#))**

23 This chapter does not limit the powers of the ~~administrator or~~ department, or preclude the
24 pursuit of any other administrative, civil, injunctive, or criminal remedies by the ~~administrator or~~
25 department or any other person. Administrative remedies need not be exhausted to proceed
26 under this chapter. The remedies provided by this chapter are in addition to those provided
27 under existing statutory or common law.

28 **SECTION 15. AMENDMENT.** Section 23.1-12-15 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **23.1-12-15. Revenue to the fund. (Contingent effective date - [See note](#))**

2 Revenue from the following sources must be deposited in the state treasury and credited to
3 the fund:

- 4 1. Any registration fees collected under section 23.1-12-17;
- 5 2. Any money recovered by the fund under section 23.1-12-23, and any money paid
6 under an agreement, stipulation, or settlement;
- 7 3. Any interest attributable to investment of money in the fund; and
- 8 4. Any money received by the ~~administrator~~department in the form of gifts, grants,
9 reimbursements, or appropriations from any source intended to be used for the
10 purposes of the fund.

11 **SECTION 16. AMENDMENT.** Section 23.1-12-17 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **23.1-12-17. Registration fee. (Contingent effective date - [See note](#))**

- 14 1. ~~An owner or operator of a tank shall pay an annual registration fee of fifty dollars for~~
15 ~~each aboveground or underground tank owned or operated by that person. If after the~~
16 ~~fiscal year has been closed and all expenses relating to the fiscal year have been~~
17 ~~accounted for, the fund balance is less than six million dollars, the annual registration~~
18 ~~fee of fifty dollars is increased to one hundred dollars. If after the fiscal year has been~~
19 ~~closed and all expenses relating to the fiscal year have been accounted for, the fund~~
20 ~~balance is five million five hundred thousand dollars or more and the annual~~
21 ~~registration fee has been increased to one hundred dollars, the fee must be reduced~~
22 ~~to fifty dollars. If after the fiscal year has been closed and all expenses relating to the~~
23 ~~fiscal year have been accounted for, the fund balance exceeds nine million dollars, the~~
24 ~~annual registration fee is reduced to five dollars. Annual registration fees must~~
25 ~~continue at five dollars until the fund balance does not exceed nine million~~
26 ~~dollars.~~Upon the recommendation and approval of the petroleum tank release
27 compensation fund board, the department shall classify tanks with respect to degree
28 of hazard, determine the risks of each classification, and fix the registration fee for
29 each classification at a rate sufficient to provide for:
 - 30 a. The payment of the expenses of administration of the fund;
 - 31 b. The reimbursement for corrective action provided under this chapter; and

1 c. The maintenance by the fund of adequate reserves and surplus so the fund may
2 be kept solvent at all times.

3 2. The department shall establish the schedule of registration fees by rules adopted in
4 accordance with chapter 28-32.

5 ~~2.3.~~ An owner or operator of an existing tank that is discovered at a location that currently
6 and previously has had tanks registered with the fund shall pay an additional
7 twenty-five dollar penalty fee in addition to the registration fee for each aboveground
8 tank and each underground tank owned or operated by that person for each previous
9 year that the tank was required to be registered for which a fee was not paid. The
10 payment includes the fees and the penalty for the failure to register.

11 ~~3.4.~~ An owner or operator of an existing tank at a location that was not previously and
12 continuously registered with the fund, whether the registration was required by law or
13 not must provide the fund with a phase two environmental study conducted by a
14 qualified firm according to American society for testing materials standards. A tank
15 integrity test must also be performed. The environmental study and tank integrity test
16 must be reviewed by the ~~commissioner~~department along with the application for
17 registration with the fund. If the ~~commissioner~~department rejects the application, the
18 applicant is denied eligibility to the fund. However, if the site is remediated and the
19 leaking tank is replaced, the applicant may reapply for registration with the fund. A new
20 installation that is using a used tank must provide tank integrity test results for the
21 used tank. Use of a synthetic liner in an aboveground dike system negates the need
22 for a tank integrity test. The owner or operator of a new tank at a new site or a new
23 tank at an existing site that had a tank registered at the site previously need only pay
24 the required fees for registration with the fund.

25 ~~4.5.~~ If accepted for registration with the fund, the owner or operator of the tank shall pay an
26 additional twenty-five dollar penalty fee in addition to the registration fee for each
27 aboveground tank and underground tank owned or operated by that person for each
28 previous year that the tank was required to be registered for which a fee was not paid,
29 regardless of ownership in each of those years. The payment includes the fees and
30 the penalty for the failure to register.

1 ~~5-6.~~ The registration fees collected under this section must be paid to the fund-
2 ~~administrator~~department for deposit in the state treasury for the dedicated credit to the
3 petroleum release compensation fund.

4 ~~6-7.~~ If a registration payment is not received within sixty days of July first by the
5 ~~commissioner~~department, a late fee of twenty-five dollars per tank per month must be
6 imposed on the tank owner or operator.

7 **SECTION 17.** A new section to chapter 23.1-12 of the North Dakota Century Code is
8 created and enacted as follows:

9 **Registration fees before adoption of rules.**

10 Until the department adopts rules establishing a schedule of registration fees under section
11 23.1-12-17, registration fees must comply with this section. An owner or operator of a tank shall
12 pay an annual registration fee of fifty dollars for each aboveground or underground tank owned
13 or operated by the person. If, after the fiscal year has been closed and all expenses relating to
14 the fiscal year have been accounted for, the fund balance is less than six million dollars, the
15 annual registration fee of fifty dollars is increased to one hundred dollars. If, after the fiscal year
16 has been closed and all expenses relating to the fiscal year have been accounted for, the fund
17 balance is five million five hundred thousand dollars or more and the annual registration fee has
18 been increased to one hundred dollars, the fee must be reduced to fifty dollars. If, after the
19 fiscal year has been closed and all expenses relating to the fiscal year have been accounted
20 for, the fund balance exceeds nine million dollars, the annual registration fee is reduced to five
21 dollars. Annual registration fees must continue at five dollars until the fund balance does not
22 exceed nine million dollars.

23 **SECTION 18. AMENDMENT.** Section 23.1-12-18 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **23.1-12-18. Reimbursement for corrective action. (Contingent effective date - [See](#)**
26 **[note](#))**

27 1. The ~~administrator~~department shall reimburse an eligible owner or operator for ninety
28 percent of the costs of corrective action, including the investigation, which are greater
29 than five thousand dollars and less than one million dollars per occurrence and two
30 million dollars in the aggregate. An eligible tank owner or operator may not be liable for

- 1 more than twenty thousand dollars out-of-pocket expenses for any one release. A
2 reimbursement may not be made unless the ~~administrator~~department determines that:
- 3 a. At the time the release was discovered the owner or operator and the tank were
4 in compliance with state and federal rules and rules applicable to the tank,
5 including rules relating to financial responsibility, rules relating to infrastructure
6 compatibility, and all rules relating to health and safety which were in effect at the
7 time of the release;
- 8 b. The department was given notice of the release as required by federal and state
9 law;
- 10 c. The owner or operator has paid the first five thousand dollars of the cost of
11 corrective action; and
- 12 d. The owner or operator, to the extent possible, fully cooperated with the
13 department ~~and the administrator~~ in responding to the release.
- 14 2. The fund shall compensate third parties for corrective action taken for a petroleum
15 release if the provisions of subdivisions a, b, c, and d of subsection 1 were met at the
16 time the release was discovered. Compensation for third-party corrective action
17 includes compensation for costs incurred in returning the real estate to that level
18 deemed duly remediated by the department.
- 19 3. The fund shall reimburse the tank owner, operator, or dealer for bodily injuries to a
20 third party caused by a petroleum release if the provisions of subdivisions a, b, c, and
21 d of subsection 1 were met at the time the release was discovered in an amount
22 determined by:
- 23 a. Findings reduced to judgment in federal or state district court or such other court
24 having jurisdiction over the matter in a proceeding in which the fund has been
25 made a party;
- 26 b. Findings by an arbitration panel agreed upon in writing by the parties in a
27 proceeding in which the fund has been made a party; or
- 28 c. A written settlement entered into by the parties in which the ~~commissioner~~director
29 of the department or the ~~commissioner's~~department's agent has participated. The
30 settlement must be reviewed and approved by the ~~commissioner~~director of the
31 department.

- 1 4. In any civil action against the owner, operator, or dealer for damages resulting from a
2 petroleum release, if the pre-leak condition of real estate is an issue, and if there is no
3 reasonable means of determining the pre-leak condition of real estate, the condition is
4 that which exists at the time the department determines the real estate has been duly
5 remediated.
- 6 5. The fund may not compensate for attorney's fees of owners, operators, or dealers, nor
7 may the fund compensate for exemplary damages, criminal fines, or administrative
8 penalties.
- 9 6. A third party accepting monetary compensation directly from the fund for damages due
10 to a release caused by a tank owner, operator, or dealer covered by the fund is
11 deemed to have waived any cause of action against the fund or against the tank
12 owner, operator, or dealer.
- 13 7. The fund shall reimburse the department for all costs, attorney's fees, and other legal
14 expenses relating to administrative and adjudicative proceedings under this chapter
15 and any subsequent legal proceeding. Any moneys reimbursed must be deposited in
16 the department's operating fund in the state treasury and must be spent subject to
17 appropriation by the legislative assembly.

18 **SECTION 19. AMENDMENT.** Section 23.1-12-19 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **23.1-12-19. Application for reimbursement. (Contingent effective date - [See note](#))**

21 An owner or operator that is a first-party claimant and that proposes to take corrective
22 action or has undertaken corrective action in response to a release, the time of the release
23 being unknown, may apply to the ~~administrator~~department for partial or full reimbursement
24 under section 23.1-12-18. An owner or operator who is a first-party claimant may be reimbursed
25 only for costs incurred after July 1, 1989, even if the releases were discovered before July 1,
26 1989, up to the maximum of twenty-five thousand dollars per location.

27 **SECTION 20. AMENDMENT.** Section 23.1-12-20 of the North Dakota Century Code is
28 amended and reenacted as follows:

1 **23.1-12-20. AdministratorDepartment to determine costs. (Contingent effective date -**
2 **[See note](#))**

3 A reimbursement for corrective actions taken by an owner, operator, or dealer may not be
4 made from the fund until the administratordepartment has determined that the costs for which
5 reimbursement is requested were actually incurred and were reasonable. All necessary loss
6 adjustment expenses must be included as a component of the loss and must be paid out of the
7 fund.

8 **SECTION 21. AMENDMENT.** Section 23.1-12-23 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **23.1-12-23. Recovery of expenses. (Contingent effective date - [See note](#))**

11 Any reasonable and necessary expenses incurred by the fund, which exceed the coverage
12 limits provided by section 23.1-12-18, in taking a corrective action, including costs of
13 investigating a release, and in taking legal actions, may be recovered in a civil action in district
14 court brought by the administratordepartment against an owner or operator. The certification of
15 expenses by an approved agent of the fund is prima facie evidence that the expenses are
16 reasonable and necessary. Any expenses that are recovered under this section must be
17 deposited in the fund.

18 **SECTION 22. AMENDMENT.** Section 23.1-12-24 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **23.1-12-24. Costs exceeding reimbursement. (Contingent effective date - [See note](#))**

21 If the cost of any extraordinary authorized action under this chapter exceeds amounts
22 awarded to the ~~administrator~~ or the department from the federal government, ~~the administrator~~
23 ~~may pay~~ the department ~~the cost of the~~ may pay the department's corrective actions costs,
24 including the cost of investigating a release, if the board finds that the cause was a petroleum
25 substance, that an adequate amount exists in the fund to pay for the corrective action, that the
26 occurrence was extraordinary in scope and size, and that a danger to the health and safety of
27 citizens exists.

28 **SECTION 23. AMENDMENT.** Section 23.1-12-25 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **23.1-12-25. Coordination of benefits. (Contingent effective date - [See note](#))**

2 If an owner or operator has an insurance policy that provides the same coverage as the
3 fund, the ~~administrator of the fund~~department shall pay the share of the covered loss or damage
4 for which the fund is responsible. The share that must be paid from the fund is equal to the
5 proportion that the applicable limit of coverage under the fund bears to the limits of insurance of
6 all insurance coverage on the same basis.

7 **SECTION 24. AMENDMENT.** Section 23.1-12-26 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **23.1-12-26. Third-party damages - Participation in actions and review of settlements.**
10 **(Contingent effective date - [See note](#))**

- 11 1. An owner or operator sued for damages resulting from a release shall notify the
12 ~~administrator~~department within fourteen days of being served with a summons and
13 complaint. The owner or operator also shall advise the ~~administrator~~department if any
14 insurer is defending the owner or operator and provide to the ~~administrator~~department
15 the name of that insurer.
- 16 2. An owner or operator that, before litigation, enters negotiations with a third party that
17 claims to have been damaged by a release, or that receives a demand for payment of
18 damages to a third party that claims to have been damaged by a release, shall notify
19 the ~~administrator~~department within fourteen days of the demand or the negotiations.
- 20 3. The ~~administrator~~department and the board shall review the conduct of any litigation
21 or negotiation. The ~~administrator~~department may not assume any legal costs incurred
22 by the defendant or plaintiff, but may participate in discovery, trial proceedings, or
23 settlement negotiations of either disputed liability or damages that bear on the
24 determination of a plaintiff's damages.
- 25 4. The ~~administrator~~department and the board shall review any settlement negotiations
26 to determine the dollar amount of bodily injury or property damage actually,
27 necessarily, and reasonably incurred by third parties which, if paid by the defendant,
28 would be considered eligible costs.

29 **SECTION 25. AMENDMENT.** Section 23.1-12-27 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **23.1-12-27. Third-party damages - Documentation. (Contingent effective date - [See](#)**
2 **[note](#))**

- 3 1. An applicant's payments for third-party damages pursuant to a judgment entered in a
4 court must include copies of the notice of entry of judgment and abstract of costs.
- 5 2. An applicant's payments for third-party damages made by agreement in settlement of
6 litigation must include copies of the settlement agreement and supporting documents
7 required by the administratordepartment.
- 8 3. An applicant's payments for third-party damages made by agreement without
9 reference to litigation must include copies of the settlement and supporting documents
10 required by the administratordepartment.
- 11 4. The administratordepartment and the board may require a third party who claims
12 bodily injury to be examined by a physician and require that the physician's report to
13 be submitted to the administratordepartment. The administratordepartment may
14 require a third party that claims property damage to permit a property appraiser or
15 claims adjuster retained by the administratordepartment to inspect the property and
16 report to the administratordepartment.
- 17 5. The fund shall pay a judgment against an owner, operator, or dealer awarded to a third
18 party as a result of a third-party claim and property damage against an owner,
19 operator, or dealer registered by the fund.
- 20 6. The fund shall pay for corrective action as awarded to a third party in any judgment
21 against an owner, operator, or dealer.
- 22 7. Liability of the tank owner, operator, dealer, or fund to third parties for corrective action
23 or personal injuries and property damage may not exceed, per person, one million
24 dollars. Maximum liability of the fund, including all claims by third parties, may not
25 exceed, for any release site, the maximum provided in section 23.1-12-18.
- 26 8. A third party may not bring an action against an owner, operator, or dealer more than
27 three years after a corrective action plan has been approved by the department if the
28 owner, operator, or dealer fully implements and complies with the corrective action
29 plan.
- 30 9. In investigating a release site or reviewing the implementation of a corrective action
31 plan approved by the department, the department shall determine whether the release

1 threatens public health or the environment. The department shall require, based on
2 science and technology appropriate for the site, any monitoring, remediation, or other
3 appropriate corrective action that is reasonably necessary to protect public health or
4 the environment. The department may require corrective action at a release site at any
5 time after a release occurs.

6 **SECTION 26. AMENDMENT.** Section 23.1-12-28 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **23.1-12-28. Matching federal funds. (Contingent effective date - [See note](#))**

9 The ~~administrator~~department and the board may annually allow the department a ten
10 percent matching grant for federal leaking underground storage tank funds to be paid out of the
11 fund if the moneys are available and the ~~administrator~~department and the board determine the
12 allowance appropriate.

13 **SECTION 27. AMENDMENT.** Section 23.1-12-29 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **23.1-12-29. Fund appropriations. (Contingent effective date - [See note](#))**

16 Money in the fund is continuously appropriated to the ~~administrator~~department for the
17 purpose of making reimbursements under this chapter.

18 **SECTION 28. AMENDMENT.** Section 23.1-12-30 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **23.1-12-30. Investment of fund. (Contingent effective date - [See note](#))**

21 Investment of the fund is under the supervision of the state investment board in accordance
22 with chapter 21-10. The ~~commissioner~~department may purchase a contract for reinsurance of
23 any risk to be paid by the fund. The ~~administrator~~department may investigate the purchase of
24 insurance that reimburses an owner or operator for property damage claims by third parties
25 other than claims for costs of corrective action.

26 **SECTION 29.** Chapter 23.1-16 of the North Dakota Century Code is created and enacted
27 as follows:

28 **23.1-16-01. Definitions.**

29 As used in this chapter, unless the context otherwise requires:

- 30 1. "Boiler" means a closed vessel in which water is heated, steam is generated, steam is
31 superheated, or any combination thereof, under pressure or vacuum for use externally

1 to the boiler by the direct application of heat from the combustion of fuels, or from
2 electricity or nuclear energy. The term includes fired units for vaporizing liquids other
3 than water when these units are separate from processing systems and are complete
4 within themselves.

5 2. "Department" means the department of environmental quality.

6 **23.1-16-02. Chief boiler inspector, deputy inspectors - Appointment - Jurisdiction.**

7 The department shall employ a chief boiler inspector and deputy inspectors. The chief boiler
8 inspector has jurisdiction over all boilers in this state except as otherwise provided.

9 **23.1-16-03. Qualifications of chief boiler inspector - Deputy inspectors.**

10 1. An individual is not eligible to the office of chief boiler inspector unless that individual:

11 a. Has had at the time of the appointment at least five years' experience in the
12 construction, inspection, operation, maintenance, or repair of high-pressure
13 boilers and pressure vessels as a mechanical engineer, boilermaker, steam
14 operating engineer, or boiler inspector. An applicant possessing a mechanical
15 engineering degree from an accredited school may substitute that degree for two
16 years of the five years' experience, at the discretion of the department.

17 b. Holds a commission issued by the national board of boiler and pressure vessel
18 inspectors or obtains the commission within one year after the date of
19 appointment by the department.

20 c. Is not directly or indirectly interested in the manufacture or sale of boilers or
21 steam machinery or articles used in the construction or maintenance of engines
22 or boilers.

23 2. The department shall establish qualifications for a deputy inspector which are not
24 inconsistent with the requirements of the position.

25 **23.1-16-04. Powers and duties of chief boiler inspector.**

26 1. The chief boiler inspector shall:

27 a. Keep a complete record of the type, dimensions, maximum allowable working
28 pressure, age, condition, location, and date of the last-recorded internal and
29 external inspection of boilers to which this chapter applies.

30 b. Cooperate and assist in loss prevention programs sponsored by the department.

1 2. The chief boiler inspector may delegate powers and duties to any deputy inspector or
2 special inspector.

3 **23.1-16-05. General requirement.**

4 Every boiler in this state must be constructed, installed, and maintained according to rules
5 adopted to implement this chapter.

6 **23.1-16-06. Exempt boilers - Inspection of exempt boilers.**

7 This chapter does not apply to:

8 1. Any boiler subject to federal inspection or under federal control.

9 2. Any boiler located on a farm and used solely for agricultural purposes.

10 3. Any heating boiler located in a private residence or in an apartment house of less than
11 six family units.

12 4. Any hot water supply boiler not exceeding the following limitations:

13 a. Input of two hundred thousand British thermal units per hour.

14 b. Pressure of one hundred sixty pounds per square inch [1103.16 kilopascals]
15 gauge.

16 c. Temperature of two hundred fifty degrees Fahrenheit [121.11 degrees Celsius].

17 5. Any portable steam cleaner commonly used in a garage.

18 6. Any boiler of a miniature model locomotive, boat, tractor, or stationary engine design
19 constructed as a hobby, not for commercial use, having an inside diameter not
20 exceeding ten inches [25.4 centimeters] and a grate area not exceeding one and
21 one-half square feet [1393.54 square centimeters] and which is properly equipped with
22 a safety valve, water level indicator, and pressure gauge.

23 7. Any electric boiler used as an integral part of an espresso coffee machine, provided
24 that the boiler does not exceed one and one-half cubic feet [.0566 cubic meter] in
25 water capacity, does not exceed fifty pounds per square inch [344.74 kilopascals]
26 pressure, and is constructed, approved, or certified to the American society of
27 mechanical engineers code or to other national or international standards.

28 **23.1-16-07. Inspection of boilers.**

29 1. The chief boiler inspector shall inspect each boiler used or proposed to be used within
30 this state. The inspection must be thorough as to the construction, installation,
31 condition, and operation as provided by the rules adopted to implement this chapter.

1 An exempt boiler may be inspected by the chief boiler inspector when the owner, the
2 owner's agent, or the user of the boiler makes written request for inspection to the
3 department.
4 2. Each boiler of one hundred thousand pounds [45359.24 kilograms] per hour or more
5 capacity, used or proposed to be used within this state, which has internal continuous
6 water treatment under the direct supervision of a graduate engineer or chemist, or one
7 having equivalent experience in the treatment of boiler water when the water treatment
8 is for the purpose of controlling and limiting serious corrosion and other deteriorating
9 factors, and with respect to which boiler the chief boiler inspector has determined the
10 owner or user has complied with the prescribed recordkeeping requirements, must be
11 inspected at least once every thirty-six months internally while not under pressure, and
12 at least once every twelve months externally while under pressure. If a hydrostatic test
13 is necessary to determine the safety of a boiler, the test must be conducted by the
14 owner or user of the equipment under the supervision of the chief boiler inspector. The
15 owner or user of a boiler of one hundred thousand pounds [45359.24 kilograms] per
16 hour or more capacity desiring to qualify for thirty-six-month internal inspection
17 intervals shall keep available for examination by the chief boiler inspector accurate
18 records showing the date and actual time the boiler is out of service and the reason
19 for being out of service, and the results of the chemical and physical analysis of the
20 boiler water, whether from laboratory analysis of samples taken at regular intervals of
21 not more than forty-eight hours or from continuous online analysers, which will
22 adequately show the condition of the water and any other elements or characteristics
23 of the water capable of producing corrosion or other deterioration of the boiler or its
24 parts. If an inspection discloses deficiencies in equipment or in operating procedures,
25 inspections may be required once every twelve months.

26 **23.1-16-08. Special inspector.**

- 27 1. Upon written request of an employer, the department may appoint as a special
28 inspector an inspector in the employ of:
29 a. An insurance company authorized to insure boilers in this state against loss from
30 explosion;

- 1 b. A company qualified by the national board of boiler and pressure vessel
2 inspectors as an accredited owner/user inspection organization; or
3 c. A company qualified by the national board of boiler and pressure vessel
4 inspectors as an accredited authorized inspection agency.
5 2. An individual may not be appointed as a special inspector unless that individual has
6 passed the examination prescribed by the national board of boiler and pressure vessel
7 inspectors.
8 3. An inspection performed by a special inspector must be performed in accordance with
9 this chapter and a complete report of the inspection must be filed with the department
10 in the time, manner, and form as prescribed by the department.
11 4. If a complete report is not filed by the special inspector's employer with the department
12 within ninety days from the certificate due date, the chief boiler inspector may make
13 the required inspection, unless an extension of time is granted by the chief boiler
14 inspector. The special inspector's employer must pay the inspection fees as required
15 by section 23.1-16-09 for a special inspection.
16 5. The chief boiler inspector may inspect any boiler to which a special inspection applies.
17 6. The department may, for cause, suspend or revoke the appointment of any special
18 inspector.

19 **23.1-16-09. Inspection and certificate fees.**

- 20 1. Upon completion of inspection, the owner or user of a boiler shall pay to the
21 department fees or a combination of inspection and certificate fees. The department
22 shall determine the inspection fees. Certificate fees are determined by section
23 23.1-16-10. The department shall determine and annually may adjust a fee scale for
24 the internal inspections of power boilers, internal inspections of low-pressure heating
25 boilers, external inspections of all boilers, and inspection of boilers used exclusively for
26 exhibition purposes.
27 2. Not more than two hundred dollars may be charged or collected for any one inspection
28 of a boiler, except for special inspections made upon request. All other inspections
29 made by the chief boiler inspector, including shop inspections and reviews and special
30 inspections when requested by the owner or user of a boiler, must be charged at a
31 rate not to exceed five hundred dollars per day or three hundred dollars per half day of

1 four hours or less, plus payment for mileage, meals, and hotel expenses as allowed by
2 sections 44-08-04 and 54-06-09, except that the mileage rate for a state-owned
3 vehicle will be the actual amount incurred by the department.

4 3. The annual fee for the issuance of a reciprocal commission card for a special
5 inspector is forty dollars and the annual fee for the issuance of a welder-qualified card
6 is twenty dollars.

7 4. The fee for taking an examination for a hobby boiler operating license is twenty-five
8 dollars and the fee for a hobby boiler operating license is twenty-five dollars.

9 5. A hobby boiler operating license issued under this section is valid for six years.

10 **23.1-16-10. Certificate of inspection - Certificate to be posted.**

11 The department shall issue a certificate of inspection for each boiler inspected upon receipt
12 of an inspection report certifying that the boiler is in a safe condition to be operated. The
13 department shall charge a fee of twenty dollars per year for each year that a certificate is valid,
14 or part of a year thereof, for each certificate of inspection issued as the result of inspections
15 authorized under sections 23.1-16-07 and 23.1-16-08. The fees are the liability of the owner or
16 user and must be paid in accordance with rules adopted by the department. A certificate may
17 not be issued for any boiler not in a safe condition to be operated or for a boiler for which the
18 inspection and certificate fees have not been paid in full. A certificate is not valid for a period of
19 more than thirty-six months for power boilers described in subsection 2 of section 23.1-16-07,
20 and no more than twelve months for other power boilers, twelve months for steam traction
21 engines, and thirty-six months for low-pressure boilers except that a two-month grace period
22 may be extended for any certificate. Upon written request from a special inspector, the chief
23 boiler inspector may issue a short-term certificate. Each certificate of inspection must be posted
24 conspicuously under glass in the boiler room or adjacent to the boiler inspected.

25 **23.1-16-11. Certificate of inspection required - Penalty.**

26 A person may not operate a boiler in this state without a valid certificate of inspection. A
27 violation of this section is a class A misdemeanor on the part of the owner, user, or operator of
28 the boiler.

29 **23.1-16-12. Manufacturer's data report.**

30 The boiler manufacturer shall provide the department with a manufacturer's data report.
31 When signed by an authorized inspector, this data sheet together with the stamp on the boiler is

1 the record denoting the boiler has been constructed in accordance with the rules adopted to
2 implement this chapter.

3 **23.1-16-13. Disposition of funds.**

4 All funds collected and received under this chapter must be paid to the state treasurer and
5 deposited in the state fire and tornado fund to be used to defray the costs of boiler inspections.

6 **23.1-16-14. Rules - Penalty for violation - Hearing.**

- 7 1. The department shall adopt rules for the safe and proper installation, use, operation,
8 and inspection of boilers and pressure vessels subject to this chapter.
- 9 2. The department shall adopt rules for the licensing of operators of hobby boilers used
10 during parades, exhibitions, and threshing shows where the public is invited.
- 11 3. A fee must be charged for an operating license, for a license renewal, and for an
12 examination conducted to determine minimum competence. Individuals operating
13 hobby boilers within this state as of July 1, 2007, are considered acceptable for a
14 license without additional training or examination. An individual who is not a resident of
15 this state and who holds a boiler operator license or credential in another state or
16 Canadian province is exempt from licensure as a hobby boiler operator in this state.
- 17 4. The department may not issue a certificate of inspection to any owner or user of a
18 boiler who fails or refuses to comply with the rules. The department shall revoke any
19 certificate presently in force upon evidence that the owner or user of the boiler is
20 failing or refusing to comply with the rules.
- 21 5. Any owner or user of a boiler may request a hearing before the department within
22 fifteen days from service of an order refusing or revoking a certificate of inspection. It
23 is the burden of the owner or user to show cause why the certificate of inspection
24 should not be refused or revoked. If no hearing is requested within the required period,
25 the order of the department becomes final and is not subject to further proceedings.

26 **SECTION 30. AMENDMENT.** Section 23.1-16-13 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **23.1-16-13. Disposition of funds.**

29 All funds collected and received under this chapter must be paid to the state treasurer and
30 deposited in the ~~state fire and tornado~~ department of environmental quality operating fund to be
31 used to defray the costs of boiler inspections.

1 **SECTION 31. REPEAL.** Chapter 26.1-22.1 of the North Dakota Century Code is repealed.

2 **SECTION 32. BOILER INSPECTION PROGRAM EVALUATION - PLAN - REPORT TO**
3 **LEGISLATIVE MANAGEMENT.** The department of environmental quality shall evaluate the
4 boiler inspection program during the 2019-20 interim, develop a plan for program fees to meet
5 program expenses, and report to the legislative management regarding the plan before
6 June 30, 2020.

7 **SECTION 33. EFFECTIVE DATE.** Section 30 of this Act becomes effective on July 1, 2020.

8 **SECTION 34. CONTINGENT EXPIRATION DATE.** Section 17 of this Act is effective until
9 the date the legislative council receives certification from the department of environmental
10 quality that rules establishing a schedule of registration fees under section 23.1-12-17 have
11 been adopted, and after that date is ineffective.